

UNITES STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN M. REGAN,

Plaintiff,

v

File No.: 2:13-cv-11368 GAD
Hon. Gershwin A. Drain

DAVID TODD and ROBERT WOJCIECHOWSKI,
in their individual and official capacities, as Police
Officers for the City of Sterling Heights Police
Department,

Defendants.

_____ /

ORDER STAYING PROCEEDINGS AND ADMINISTRATIVELY CLOSING CASE

On May 22, 2014, this Court issued an order denying Defendants' Motion for Summary Judgment [#15], finding that Defendants were not entitled to qualified immunity on Plaintiff's claims brought under 42 U.S.C. § 1983. Defendants have filed a notice of appeal, but have not requested a stay of the proceedings in this Court.

When considering an appeal as to qualified immunity, *Yates v. City of Cleveland*, 941 F.2d 444, 449 (6th Cir. 1991) addresses the potential for abuse by defendants. *Yates* notes that such an appeal "brings with it a concomitant responsibility on the part of the defendant to exercise 'a reasonable modicum of diligence in the exercise of that right.'" *Id.* (citing *Kennedy v. City of Cleveland*, 797 F.2d 297, 301 (6th Cir. 1986)). Thus, a district court that determines that such an appeal is frivolous, filed for the purpose of delaying trial, may "certify an appeal as frivolous and begin the trial..." *Id.* (citing *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)). In the instant case, the Parties did not seek the Court's determination as to the potential frivolity of the appeal. Rather, the parties assumed the

matter was subject to an automatic stay once Defendants filed a notice of appeal in the Sixth Circuit.

Because the Court recognizes that Plaintiff has not objected to Defendants pursuit of an appeal despite the absence of a request for a stay, all proceedings in the district court case are hereby STAYED and the matter is administratively CLOSED pending appeal.

SO ORDERED.

Dated: July 8, 2014

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of
record on
July 8, 2014, by electronic and/or ordinary mail.

/s/ Tanya Bankston
Deputy Clerk